

**ASSEMBLY BILL**

**No. 1029**

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**Introduced by Assembly Member Jerome Horton**

February 22, 2005

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An act to amend Section 30101.7 of the Revenue and Taxation Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as introduced, Jerome Horton. Tobacco products: sales: noncompliance.

(1) The Cigarette and Tobacco Products Tax Law requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes. In addition to the requirement to pay taxes on the distribution of cigarettes, existing law also requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. Existing federal law, known as the Jenkins Act, requires any person that sells or transfers, in interstate commerce, cigarettes into a state that taxes the sale or use of cigarettes to file and report specified information with the tobacco tax administrator of that state.

Existing law requires, except under specified circumstances, that each retail sale of cigarettes in the state is to be a face-to-face sale, as defined. Existing law exempts a person from this face-to-face sale restriction, if that person has paid all applicable state taxes and is in compliance with the federal Jenkins Act.

This bill, in addition to the existing requirements for an exception from the restrictions of face-to-face sales of cigarettes, would also require a person to be in full compliance with state licensure provisions and with a specified provision of the Health and Safety Code.

(2) Existing law authorizes the Attorney General, or a city attorney, county counsel, or district attorney to bring a civil action, as specified, to enforce these provisions that apply to a retail seller of cigarettes and tobacco products, including the imposition of a fine in the amounts specified.

This bill would authorize the Attorney General, or a city attorney, county counsel, or district attorney to bring a separate civil action against a retail seller that fails to pay taxes on products sold in a face-to-face transaction, and would impose a penalty against that retail seller in an amount equal to 500% of the unpaid taxes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 30101.7 of the Revenue and Taxation  
2 Code is amended to read:

3 30101.7. (a) It is the intent of the Legislature in enacting this  
4 section to facilitate the collection of all applicable state surtaxes  
5 and sales or use taxes on cigarettes sold to residents of the state.

6 (b) Except as provided in subdivision (d), no person may  
7 engage in a retail sale of cigarettes in California unless the sale is  
8 a vendor-assisted, face-to-face sale.

9 (c) For the purposes of this section, “face-to-face sale” means  
10 a sale in which the purchaser is in the physical presence of the  
11 seller or the seller’s employee or agent at the time of the sale. A  
12 face-to-face sale does not include any transaction conducted by  
13 mail order, the Internet, telephone, or any other anonymous  
14 transaction method in which the buyer is not in the seller’s  
15 physical presence or the physical presence of the seller’s  
16 employee or agent at the time of the sale.

17 (d) A person may engage in a non-face-to-face sale of  
18 cigarettes to a person in California provided that ~~both~~ *all* of the  
19 following conditions are met:

20 (1) The seller has fully complied with all of the requirements  
21 of Chapter 10A (commencing with Section 375) of Title 15 of  
22 the United States Code, otherwise known as the Jenkins Act.

23 (2) The seller has fully complied with ~~either of the following~~  
24 ~~requirements~~:

1 ~~(A) All applicable California taxes on the cigarettes have been~~  
2 ~~paid.~~

3 ~~(B) The all of the requirements imposed by Sections 22972 to~~  
4 ~~22974.8, inclusive, of the Business and Professions Code and~~  
5 ~~imposed by Sections 22980.1 to 22982, inclusive, of the Business~~  
6 ~~and Professions Code.~~

7 (3) The seller has collected and remitted to the board all  
8 applicable California taxes imposed on cigarettes, or, if  
9 applicable, has provided verification and evidence that the  
10 applicable taxes have already been paid.

11 (4) The seller has verified that the manufacturer of the  
12 cigarettes is in full compliance with paragraph (2) of subdivision  
13 (a) of Section 104557 of the Health and Safety Code.

14 (5) The seller includes on the outside of the shipping  
15 container for any cigarettes shipped to a resident in California  
16 from any source in the United States an externally visible and  
17 easily legible notice located on the same side of the shipping  
18 container as the address to which the package is delivered stating  
19 as follows:

20  
21 “IF THESE CIGARETTES HAVE BEEN SHIPPED TO  
22 YOU FROM A SELLER LOCATED OUTSIDE OF THE  
23 STATE IN WHICH YOU RESIDE, THE SELLER HAS  
24 REPORTED PURSUANT TO FEDERAL LAW THE SALE  
25 OF THESE CIGARETTES TO YOUR STATE TAX  
26 COLLECTION AGENCY, INCLUDING YOUR NAME  
27 AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE  
28 FOR ALL APPLICABLE UNPAID STATE TAXES ON  
29 THESE CIGARETTES.”  
30

31 (e) The State Board of Equalization shall provide information  
32 to the Attorney General relative to a seller’s failure or attempt to  
33 comply with ~~the Jenkins Act to the Attorney General the~~  
34 ~~provisions of subdivision (d).~~

35 (f) The Attorney General or a city attorney, county counsel, or  
36 district attorney may bring a civil action to enforce this section  
37 against any person that violates this section and, in addition to  
38 any other remedies provided by law, the court shall assess a civil  
39 penalty in accordance with the following schedule:

1 (1) A civil penalty of not less than one thousand dollars  
2 (\$1,000) and not more than two thousand dollars (\$2,000) for the  
3 first violation.

4 (2) A civil penalty of not less than two thousand five hundred  
5 dollars (\$2,500) and not more than three thousand five hundred  
6 dollars (\$3,500) for the second violation within a five-year  
7 period.

8 (3) A civil penalty of not less than four thousand dollars  
9 (\$4,000) and not more than five thousand dollars (\$5,000) for the  
10 third violation within a five-year period.

11 (4) A civil penalty of not less than five thousand five hundred  
12 dollars (\$5,500) and not more than six thousand five hundred  
13 dollars (\$6,500) for a fourth violation within a five-year period.

14 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth  
15 or subsequent violation within a five-year period.

16 (g) *In addition to the civil actions and penalties authorized*  
17 *pursuant to subdivision (f), the Attorney General or a city*  
18 *attorney, county counsel, or district attorney may bring a civil*  
19 *action against any person that fails to pay any tax that applies to*  
20 *a face-to-face sale of cigarettes in this state and, in addition to*  
21 *any other remedies provided by law, the court shall assess a civil*  
22 *penalty in an amount equal to 500 percent of the unpaid taxes*  
23 *that are owed by that person.*

24 (h) The Attorney General shall provide an annual report to the  
25 Legislature regarding all actions taken to comply with, and  
26 enforce, ~~the Jenkins Act~~ *the provisions of subdivision (d).*

27 ~~(h)~~

28 (i) This section does not prohibit any lawful sale of a tobacco  
29 product that occurs by means of a vending machine.

30 ~~(i)~~

31 (j) Nothing in this section shall relieve the seller of cigarettes  
32 from any other applicable requirement of state law relating to the  
33 sale of cigarettes.

34 ~~(j)~~

35 (k) The provisions of this section are severable. If any  
36 provision of this section or its application is held invalid, that  
37 invalidity shall not affect other provisions or applications that can  
38 be given effect without the invalid provision or application.

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